bind Government by stepping outside the limits of the power given by section 18. If he does step outside them, his action is illegal: and no waiver on his part can atone for the failure of the claimant to fulfil the statutory conditions which the law required them to fulfil before their right to require the Collector to make a reference could come into existence."

I think that passage disposes of the point, but before departing from the case I think I should say a few words about the argument of counsel for the landowners based on the local case of *Chia Yew Siang v. The Collector of Land Revenue, Singapore, supra.* That case was decided before the Ordinance was amended by the addition to section 19 (it was then section 18) of the fourth sub-section, the terms of which have already been quoted. In it Stevens, J., held that the Court had power to enlarge the time for making an application under section 18(3) of the Ordinance by virtue of section 37 of the Ordinance itself and section 1333 of the Civil Procedure Code (now Order LXI rule 2). Section 37 provides that save in so far as they may be inconsistent with anything contained in the Ordinance the provisions of the Rules of the Supreme Court shall apply to all proceedings before the Court under the Ordinance and Order LXI rule 2 provides that the Court may enlarge the time appointed by the Rules "for doing any act or taking any proceedings." It was held that this rule was not inconsistent with the provisions of the Land Acquisition Ordinance and that this would have to be read with section 37 of the Ordinance so as to give the Court power to enlarge the time appointed by section 18(3) [now 19(3)]. By reason of the amendment of the Ordinance, which has been mentioned, this case is no longer of practical importance. Counsel for the landowners, however, in the present case has argued that it is authority for the proposition that rule 3 of Order LXI in effect enables the Collector to do what he would otherwise be unable to do, that is to agree to an enlargement of the time prescribed by section 19(3).

Though attractive at first sight, to my mind this argument must fail. In this connection I do not think it necessary to discuss the question of whether *Chia Yew Siang's* case, *supra,* was correctly decided. To my mind it is sufficient to point out that there is a very great difference between rule 2 and rule 3 of Order LXI. By rule 2 the Court "may enlarge.....the time appointed .....for doing any act or taking any proceeding." By rule 3 "the time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing." Whatever be the scope of rule 2, the scope of rule 3 is clearly confined to matters that can only come into existence after proceedings have been commenced. And in the present case, what we are concerned with is the actual commencement of proceedings.

Though I have much sympathy with the landowners and think that they have been very badly treated by Government nevertheless in my judgment the law is clearly against them and I would, therefore, dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

ONG AH SIONG v. LEE GUAY ENG

[C. A. (Knight Ag. C.J., Tan Ah Tah and Rigby JJ.) November 8, 1957]

[Singapore — Civil Appeal No. 32 of 1956]

Land Acquisition — Persons entitled to receive compensation — Title by adverse possession — Whether proceedings a nullity as requirements under s.21 of the Land Acquisition Ordinance (Cap.248) — Proviso 3 to s.40(2).

The Collector of Land Revenue after conducting an inquiry as to the *quantum* of compensation payable to persons entitled to receive it awarded a sum of $104,359.20 to the respondent in preference to the appellant which decision was upheld by the trial Judge. In this appeal the appellant contended that the proceedings in the Court below were a nullity as section 21 of the Ordinance was not complied with in that the "persons interested" was not properly served with notices of such proceedings.

Held: as no objection was made at the time of trial the appellant is estopped from so doing on appeal.

Held further: the appellant's interests were in no way prejudiced by the fact that no attempt was made to serve notices on other "persons interested" as these persons could proceed against the respondent under proviso 3 to section 40(2).

Case referred to:—

(1) *Chia Wan Kiat v. M. Theynappa Ltd.* (1955) M.L.J. 198.

COURT OF APPEAL.

A. Muthuswamy for the appellant.

R. H. Green for the respondent.

Cur. Adv. Vult.

Knight Ag. C.J. (with whom Tan Ah Tah and Rigby JJ. agreed): — This is an appeal from a decision of the learned trial Judge following a reference to his Court under section 19 of the Land Acquisition Ordinance (Chapter 248 of the Laws). It is admitted that certain land, which lies off Macpherson Road, was acquired by the Government at the end of 1952 and after he had conducted an inquiry as to the *quantum* of compensation which should be payable and the persons entitled to receive it, the Collector awarded the sum of $5,794 to a Mr. Chen (with which I am not concerned in these proceedings) and $104,359.20 to a Madam Lee Guay Eng — the respondent in the Court below and here. As the latter part of his award was contested, the Collector very properly paid the sum of $104,359.20 into Court and in due course the learned trial Judge found in favour of Madam Lee and directed that the compensation should be paid to her in preference to the appellant, who also appeared in the proceedings in the Court below. Perhaps I should add that neither party has appealed against the *quantum* of compensation awarded.

Throughout the course of this appeal (which was argued for nearly four days) until the very end of his address, Mr. Muthuswamy, for the appellant conceded that he accepted each and every finding of fact made by the learned trial Judge. Just before concluding he admittedly sought to correct what he had said earlier as regards Madam Sng ever having been possessed of any part of the acquired land but his main argument and the one on which this appeal really depends is whether the procedure in the Court below was proper and in particular, whether all the parties interested in the land were given notice of those proceedings. In these circumstances it is irrelevant to set out the facts which were argued in the Court below as Mr. Muthuswamy is really only asking this Court to declare the proceedings in that Court a nullity. He also asks that Madam Lee be directed to pay back into Court the compensation she has received pending a rehearing under the Land Acquisition Ordinance.

If I understood Mr. Muthuswamy correctly — and I must confess that at times I had the very greatest difficulty in following his arguments — his first contention is that the trial Judge was wrong in not framing issues as he was asked to do at the trial by the appellant's Counsel. It is true that in another and similar case (*Chia Wan Kiat v. M. Theynappa Ltd.*[1]) issues were framed and in references such as this, which are really in the nature of an interpleader matter, I think it is better that they should be framed. But there is not one word which makes this obligatory in the Ordinance nor did Counsel in the Court below quote any authority in support of it. In my opinion it suffices to say that it would be quite ridiculous to upset the decision simply because issues were not framed.

The next, and far more substantial point, taken for the appellant is whether the proceedings were a nullity because the requirements of section 21 of the Ordinance were not complied with. It is not in dispute that the registered owners of the land are the estate of the late Lee Chin Seng and one Khoo Tiong Pan (from whom Madam Lee claims title by adverse possession) and from Schedule VII, which accompanied the Collector's reference to the Court it seems that notices were sent by post to which no acknowledgments were received. One of these notices, indeed, is merely shown as "posted." It is thus argued for the appellant that these persons must be "persons interested" under section 21 of the Ordinance, that they have not been properly served and that the proceedings below for this reason were a nullity.

Now this is a very strange objection for the appellant to take for if it should succeed and some person or persons be traced claiming to have an interest in the estate of Mr. Lee or Mr. Khoo (the latter can also with safety be presumed to be dead) it must, of course, follow that there would be yet a third claimant to the land who, no doubt, would dispute the appellant's claim to it, which is derived from Madam Sng's alleged title by adverse possession. It is thus manifest that this objection is taken merely to defeat Madam Lee and with no hope of any material benefit accruing from it to the appellant. In short it has no merit particularly when it is remembered that should at any time any representative of either of these estates come forward from the dim past it would be quite open to him to proceed against Madam Lee. One thing, however, is very clear — namely that no objection on these lines was made at the time of the trial (as is readily understandable) and none would have been made now by the appellant had he succeeded in persuading the trial Judge to make the award in his favour. In short the appellant accepted the jurisdiction of the Court below and now seeks to question it because he did not like the outcome. In my opinion he must clearly be estopped from so doing. He had every opportunity of raising this objection in the Court below yet he failed to do; his interests were in no way prejudiced by the fact that no attempt was made to serve notices on these other parties and should these parties exist (which is most doubtful) they can proceed against Madam Lee under proviso 3 to section 40 (2) of the Ordinance.

I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Muthu & Co.; Braddel Bros.*

AHMAD BIN HASSAN v. PUBLIC PROSECUTOR

[C.A. (Thomson, C.J., Hill and Syed Sheh Barakbah, JJ.) January 14, 1958]

[K.L. — F.M. Criminal Appeal No. 57 of 1957]

Penal Code, s.377 — Unnatural offence by adult on juvenile — Sentence of whipping.

Unnatural offence committed by an adult on a juvenile merits severe punishment. However, in view of the well-known psychological connection between the giving and the suffering of pain and sexual perversion, a sentence of whipping is not a suitable punishment for such offence.

COURT OF APPEAL.

Appellant in person.

Mohd. Suffian (Sr. Federal Counsel) for the respondent.

The judgment of the Court was delivered by —

Thomson, C.J.: — This appellant was convicted at Kuala Lumpur for committing an unnatural offence in contravention of section 377 of the Penal Code and sentenced to six years' imprisonment and a whipping of six strokes. He appealed against his sentence but not against his conviction.

The appellant is a man of 26 years of age and the offence was committed on a boy of 11. The offence was committed on 11th April, 1957. The appellant was convicted on 21st November, 1957, and the appeal was heard on 7th January, 1958.

In our view the sentence of imprisonment was fully justified but the sentence of corporal punishment was not a suitable one and we accordingly quashed so much of the sentence as consisted of an order for corporal punishment.

The offence was a serious one, as is indeed every offence of this sort committed by an adult on a juvenile, and fully merited severe punishment. On the other hand in view of the well-known psychological connection between the giving and the suffering of pain and sexual perversion we are of the opinion that in cases involving sexual perversion flogging is not a suitable punishment.

Order of whipping revoked.

Appeal dismissed.